

GINARTE , O'DWYER, GONZALEZ  
 GALLARDO & WINOGRAD, LLP.  
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 NEWARK, NEW JERSEY 07105  
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 OUR FILE NO.: 244625  
 ATTORNEYS FOR PLAINTIFF

Carlos Pena  <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">- against-</p> United States of America Patriot Contract Services, LLC.	UNITED STATES DISTRICT COURT DISTRICT OF NEW JERSEY  CIVIL ACTION NO.:  <p style="text-align: center;"><b>CIVIL ACTION</b></p>  <p style="text-align: center;"><b>COMPLAINT</b></p>
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Plaintiff, Carlos Pena, by his attorneys, GINARTE, O'DWYER, GONZALEZ,  
 GALLARDO, WINOGRAD, LLP, for his complaint, respectfully alleges as follows:

### **PARTIES AND JURISDICTION**

1. Plaintiff, CARLOS PENA, is an individual and citizen of the State of New York residing at 540 West 144<sup>th</sup> Street, Apartment 51, New York, NY 10031.
2. At all material times, Defendant, UNITED STATES OF AMERICA, was and still is a sovereign state, which, by Act of Congress of March 9, 1920 (46 U.S.C. §§ 741 *et seq.*), as amended, commonly known as the Suits in Admiralty Act, has consented to be sued in this Honorable Court on the cause or causes of action set forth herein.

3. At all times relevant hereto Defendant, PATRIOT CONTRACT SERVICES, LLC was a California Limited Liability Company with its principal place of business located at 1320 Willow Pass Road, Suite 485, Concord, CA 94520, United States.
4. At all material times, defendant UNITED STATES OF AMERICA and/or its agent defendant PATRIOT CONTRACT SERVICES, LLC owned and operated, controlled and/or chartered the vessel USNS (United States Naval Ship) POMEROY which was and is a public vessel of the United States, currently within this District, or was employed as such by Defendant, and Defendant is amenable to suit herein pursuant to Act of Congress of March 9, 1920 (46 U.S.C. §§ 741 et seq.), as amended, commonly known as the Suits in Admiralty Act or in the alternative pursuant to the provisions of an Act of Congress of March 3, 1925 (46 U.S.C. §§ 781 et seq.), as amended, commonly known as the Pubic Vessels Act.
5. Plaintiff is also simultaneously commencing an action sounding in negligence in the SUPERIOR COURT OF NEW JERSEY LAW DIVISION - HUDSON COUNTY against Unique Outside Machine Corp., who acted as the general contractor and was responsible for all construction related activities at the site and ABC Corporation #1-10 and John Does #1-10 which are unidentified business entities and/or persons named to toll the applicable statute of limitations who participated in any work at the site including, but not limited to, ship building, construction, electrical, fire, renovation, plumbing, remodeling and/or landscaping work and/or had responsibilities for work site safety and/or managed, supervised, directed, controlled, oversaw, or supplied labor and/or tools and/or building supplies and/or

equipment for the work ongoing at the job site and/or supervised, directed and/or controlled the work site and/or had responsibilities for work site safety.

6. In addition, on February 19, 2016, Plaintiff also presented his claim to the appropriate federal agency in accordance with 28 U.S.C Section 2679(d)(5) concerning his cause of action against the United States of America.

### **FACTS COMMON TO ALL CAUSES OF ACTION**

7. On March 5, 2014, plaintiff's employer PENINSULA INDUSTRIAL SERVICES was engaged in providing temporary employee placement to conduct repair services. On March 5, 2014, PENINSULA INDUSTRIAL SERVICES placed plaintiff on the project of BAYONNE DRY-DOCK and REPAIR CORPORATION. BAYONNE DRY-DOCK and REPAIR CORPORATION contracted to provided repairs on the USNS POMEROY at their facility located at the Military Ocean Terminal in Bayonne, New Jersey.
8. The plaintiff was selected to work on the BAYONNE DRY-DOCK and REPAIR CORPORATION project. On or about March, 5, 2014 at approximately 9:30 A.M., the plaintiff was on or about the US POMEROY and adjacent dock, attempting to disassemble and remove scaffolding which was no longer necessary for the project. The plaintiff was working at Graving Dock Number 7 of the Military Ocean Terminal in Bayonne, New Jersey. The scaffolding was arranged around the starboard (right) propeller of the USNS POMEROY.

9. That heretofore and on or about the 5<sup>th</sup> day of March, 2014, plaintiff suffered serious and permanent personal injuries in the course of his employment aboard and on the dock adjacent to the aforesaid vessel, when he was caused to fall while attempting to aid the disassembly of the unstable scaffold without any attainable place to tie off his safety harness. While the plaintiff was kneeling on one of the scaffolding planks, it split, causing him to fall off the plank down to the graving dock floor below. As a result of the plaintiff's fall from the unstable scaffold, he suffered significant injuries including but not limited to a fractured left ankle.

#### **FIRST COUNT**

10. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 7 of his Complaint with the same force and effect as if set forth fully at length herein.
11. That the aforesaid occurrence on or about March 5, 2014 was due to the negligence of the Defendant UNITED STATES, its agents and servants, the fault, neglect and carelessness of the officers and fellow seamen aboard the vessel; the Defendant UNITED STATES' failure to provide and maintain reasonably safe equipment, the failure to provide adequate safety rules and procedures, the failure to correct dangerous and hazardous conditions, the failure to provide adequate scaffolding, an adequate place to tie off his safety harness to protect from the force of gravity. In addition, Defendant UNITED STATES failed to provide adequate warnings, take adequate means or precautions for the safety of the plaintiff; in failing to provide

the plaintiff with a reasonably safe place wherein to work, and in other particulars to be presented at trial.

12. As a result of the foregoing, the plaintiff was rendered sick, sore, lame and disabled and sustained severe and permanent personal injuries, was and is internally and externally disabled causing him to suffer pain, and for a time he was prevented from attending to his daily labors, thereby losing sums of money which he otherwise would have earned as wages, and has endeavored to be cured of his injuries, and has expended sums of money to maintain himself, and will continue to endure pain and suffering, all to his damage.

13. By reasons of the foregoing, plaintiff has been damaged in an amount to be determined at trial.

WHEREFORE, Plaintiff CARLOS PENA demands judgment against Defendant for damages against the Defendant, UNITED STATES OF AMERICAN, together with interest and costs and for such other, further and different relief as to the Court seems just and proper.

### **SECOND COUNT**

14. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 11 of his Complaint with the same force and effect as if set forth fully at length herein.

15. That the aforesaid occurrence on or about March 5, 2014 was due to the negligence of the Defendant PATRIOT CONTRACT SERVICES, LLC its agents and servants, the fault, neglect and carelessness of the officers and fellow seamen aboard the vessel; the Defendant PATRIOT CONTRACT SERVICES, LLC failure to provide and maintain reasonably safe equipment, the failure to provide adequate safety rules and procedures, the failure to correct dangerous and hazardous conditions, the failure to provide adequate scaffolding, an adequate place to tie off his safety harness to protect from the force of gravity. In addition, Defendant PATRIOT CONTRACT SERVICES, LLC failed to provide adequate warnings, take adequate means or precautions for the safety of the plaintiff; in failing to provide the plaintiff with a reasonably safe place wherein to work, and in other particulars to be presented at trial.

16. As a result of the foregoing, the plaintiff was rendered sick, sore, lame and disabled and sustained severe and permanent personal injuries, was and is internally and externally disabled causing him to suffer pain, and for a time he was prevented from attending to his daily labors, thereby losing sums of money which he otherwise would have earned as wages, and has endeavored to be cured of his injuries, and has expended sums of money to maintain himself, and will continue to endure pain and suffering, all to his damage.

17. By reasons of the foregoing, plaintiff has been damaged in an amount to be determined at trial.

WHEREFORE, Plaintiff CARLOS PENA demands judgment against Defendant for damages against the Defendant, PATRIOT CONTRACT SERVICES, LLC together with interest and costs and for such other, further and different relief as to the Court seems just and proper.

**JURY DEMAND**

Plaintiff hereby demands a jury in this matter with respect only to claims permitted to be heard against Patriot Contract Services, LLC.

**NOTICE OF TRIAL COUNSEL**

Please take notice that the firm Ginarte O'Dwyer Gonzalez Gallardo & Winograd, LLP, attorneys for the Plaintiff, hereby appoint Richard M. Winograd as trial counsel.

GINARTE, O'DWYER, GONZALEZ,  
GALLARDO & WINOGRAD, LLP.  
Attorneys for Plaintiff



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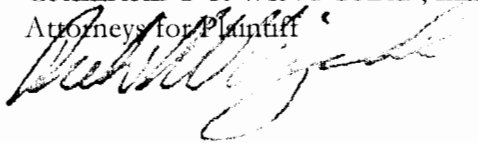
RICHARD M. WINOGRAD, ESQ.

DATE: March 3, 2016

**CERTIFICATION**

I, the undersigned, do hereby certify to the best of my knowledge, information and belief, that except as hereafter indicated, the subject matter of the controversy referred to in the within pleading is not subject of any other cause of action, pending in any other court, or of a pending arbitration proceeding, nor is any other cause of action or arbitration proceeding contemplated.

GINARTE, O'DWYER, GONZALEZ,  
GALLARDO & WINOGRAD, LLP.  
Attorneys for Plaintiff



DATE: March 3, 2016

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RICHARD M. WINOGRAD, ESQ.



The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

<b>I. (a) PLAINTIFFS</b> CARLOS PENA	<b>DEFENDANTS</b> UNITED STATES OF AMERICA PATRIOT CONTRACT SERVICES, LLC.
(b) County of Residence of First Listed Plaintiff <u>New York (NY)</u> <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i>	County of Residence of First Listed Defendant <u>Contra Costa</u> <i>(IN U.S. PLAINTIFF CASES ONLY)</i>
(c) Attorneys (Firm Name, Address, and Telephone Number) Ginarte, O'Dwyer, Gonzalez, Gallardo & Winograd, LLP. 400 Market Street Newark, NJ 071025 Attn: Richard M. Winograd	NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.  Attorneys (If Known)

<b>II. BASIS OF JURISDICTION</b> <i>(Place an "X" in One Box Only)</i>  <input type="checkbox"/> 1 U.S. Government Plaintiff <input checked="" type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 3 Federal Question <i>(U.S. Government Not a Party)</i> <input type="checkbox"/> 4 Diversity <i>(Indicate Citizenship of Parties in Item III)</i>	<b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> <i>(Place an "X" in One Box for Plaintiff and One Box for Defendant)</i> <table style="width: 100%; border-collapse: collapse;"> <tr> <th></th> <th>PTF</th> <th>DEF</th> <th></th> <th>PTF</th> <th>DEF</th> </tr> <tr> <td>Citizen of This State</td> <td><input type="checkbox"/> 1</td> <td><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td><input type="checkbox"/> 4</td> <td><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2</td> <td><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td><input type="checkbox"/> 5</td> <td><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
	PTF	DEF		PTF	DEF																				
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Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6																				

IV. NATURE OF SUIT <i>(Place an "X" in One Box Only)</i>					
<b>CONTRACT</b> <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input checked="" type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability  <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<b>FORFEITURE/PENALTY</b> <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other  <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act  <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<b>BANKRUPTCY</b> <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157  <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark  <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))  <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<b>OTHER STATUTES</b> <input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

<b>V. ORIGIN</b> <i>(Place an "X" in One Box Only)</i> <input checked="" type="checkbox"/> 1 Original Proceeding <input type="checkbox"/> 2 Removed from State Court <input type="checkbox"/> 3 Remanded from Appellate Court <input type="checkbox"/> 4 Reinstated or Reopened <input type="checkbox"/> 5 Transferred from Another District (specify) <input type="checkbox"/> 6 Multidistrict Litigation					
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<b>VI. CAUSE OF ACTION</b>	Cite the U.S. Civil Statute under which you are filing <i>(Do not cite jurisdictional statutes unless diversity):</i>  Brief description of cause: Construction site accident injuries
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<b>VII. REQUESTED IN COMPLAINT:</b>	<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.                    DEMAND \$ _____ CHECK YES only if demanded in complaint: JURY DEMAND: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
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<b>VIII. RELATED CASE(S) IF ANY</b>	(See instructions). JUDGE _____ DOCKET NUMBER _____
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DATE <u>3/04/16</u>	SIGNATURE OF ATTORNEY OF RECORD	JUDGE _____
FOR OFFICE USE ONLY		
RECEIPT # _____	AMOUNT _____	APPLYING IFP _____
		JUDGE _____
		MAG. JUDGE _____

# INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

## Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
  - (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
  - (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
- United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.